RAJENDRAN NARASIAMMAN

v.

YAP SOON

HIGH COURT MALAYA, SEREMBAN
AJAIB SINGH J
[CIVIL SUIT NO. 161 OF 1977]
9 MARCH 1982

TORT: *Negligence - Employee injured while in the course of employment - Whether proper and adequate safety measures provided to avoid accident - Liability - Whether any contribution by employee.*

The plaintiff about 18 years old at the time of the accident sued the defendant for damages arising out of an accident in the defendant's factory on 29 December 1976 at about 1.50 p.m. where the plaintiff was employed as a general labourer. The plaintiff averred that at all material times, he was pushing rubber scrap into a scrap machine in the course of his employment when he slipped because of the slippery floor causing his right hand to be trapped in between the rollers of the machine. As a result he suffered a crush injury to his right hand resulting in a complete amputation of all fingers. The plaintiff alleged that the accident was caused by the negligence of the defendant or his servants and agents and that the defendant had failed in his duty to provide a safe system of work.

The defendant while admitting that the plaintiff was employed in his factory denied that the accident was caused by any negligence on his part or of his servants and agents and he averred that the accident was caused by the negligence of the plaintiff himself or in the alternative was contributed to by his negligence.

Held:

[1] The use of bare hands without any instrument to push the scrap rubber into the machine was dangerous as there was no barrier near the rollers to provide protection for the hands of the workers.

[2] By the very nature of the job which the plaintiff was doing the defendant owed him a duty to see that he was not placed in a dangerous situation without providing proper and adequate protection against a mishap of the kind which occurred in this case.

[3] The defendant was wholly liable as he had failed to provide adequate safety measures to avoid such an accident.

[4] Basing on the plaintiff's earnings between RM200 and RM250 p.m. an award of RM22,000 is made for pain and suffering and loss of amenities. A sum of RM11,800 is awarded for 59 months as the pre-trial loss at the rate of RM200 p.m. A further sum of RM17,900 for future loss of earnings at the rate of RM120 p.m. on 20 years' purchase. Agreed special damages of RM315.

[Judgment for the plaintiff.]

For the plaintiff - Joga Singh Dhalliwal
For the defendant - Wilfred Abraham

JUDGMENT

Ajaib Singh J:

The plaintiff in this case sued the defendant for damages arising out of an accident in the defendant's factory where the plaintiff was employed as a general labourer.

In his statement of claim the plaintiff averred that on 29 December 1976 at about 1.50 p.m. he was pushing rubber scrap into a scrap machine in the course of his employment when he slipped because of the slippery floor causing his right hand to be trapped in between the rollers of the machine. As a result he suffered serious injuries on his right hand. The plaintiff alleged that the accident was caused by the negligence of the defendant or his servants and agents and that the defendant had failed in his duty to provide a safe system of work.

The defendant while admitting that the plaintiff was employed in his factory denied that the accident was caused by any negligence on his part or of his servants and agents and he averred that the accident was caused by the negligence of the plaintiff himself or in the alternative was contributed to by his negligence.

The plaintiff's case was that in the course of his work he would take scrap rubber from a tank beside the scrap machine and with the aid of a basket would scoop up the rubber and put it on an aluminum plate. He would then push the rubber into the machine with his right hand. On the day in question he slipped while he was pushing the scrap rubber and as he slipped his right hand got inside the machine and was crushed. He shouted out and another employee switched off the machine.

The plaintiff said that the floor was wet and slippery. As he scooped up the rubber from the tank the water would drip on to the cement floor. He said that he was not given any instrument to push the rubber into the machine and when he started work the mandore had told him how to do the job but there was no further supervision. He said that he was told to push the rubber with his hand. If there were big lumps of rubber it would require some force to push the rubber.

In cross-examination the plaintiff said that he was barefooted at that time and nobody had told him that he should wear footwear. In answer to the Court he said that the floor was slippery every day and that he had complained to the mandore and to the defendant that the floor was very slippery and dangerous. He himself did not mop the place. His job was to push the rubber. He did not wear footwear because of some skin disease.

K. Palaniappan, PW3, a rubber tapper and who was the mandore of the factory at that time described how the plaintiff worked at the scarp machine. He said that the plaintiff would lift the scrap rubber from the tank which also contained water and pushed the rubber into the machine. As rubber is taken out of the tank the water drips on the floor as well as on the aluminum plate of the machine. Thus the floor is wet while the work is in progress. He said that the plaintiff pushed the rubber with his hands. The workers used a basket to scoop the rubber from the tank to the chute and some workers had been using the same basket to push the rubber to the rollers and sometimes the basket would get caught in the machine. So the clerk stopped the workers from using the basket. They were allowed only to use the basket to scoop the rubber from the tank but not to push along the chute into the machine. After these instructions the basket was to be used only to scoop the rubber from the tank. PW3 said that he stopped working as a mandore in the factory in April 1980. He said that the plaintiff's salary was more than RM6 per day including COLA and shift allowance. At times he also got overtime pay.

PW3 said that the scrap rubber was placed between the end of the chute and the worker pushed it by standing on the side. One small basketful is scooped at one time. His job as a mandore was to supervise the work and to see that everything went on smoothly. There was no requirement about wearing shoes and neither were gloves provided. He had not seen the accident but rushed up when the workers shouted.

In cross-examination PW3 said that during his 10 years in the factory there had never been such an accident. He said that the plaintiff had complained to him once that the floor was slippery and on the next shift he had the floor cleaned and said that when the floor was not cleaned it was slippery.

There were two witnesses for the defence. The first was Tan Jik Tan, assistant inspector of factories. He said that he was aware of the accident. The estate manager had telephoned his office and a form was sent to the factory for completion which was done in about two weeks time. After that he visited the factory on 13 January 1977. His report dated 19 March 1977 (Exhibit D2) which he put up was delayed as he could not contact the injured person. He said that he had requested the manager of the factory to get the injured person for a statement to be recorded but he failed to turn up.

In cross-examination he said that he did not know if the manager had contacted the injured person. He said that he did take a statement from another worker named Jamilah. He had asked the manager to get all the workers but he produced only this girl. He said that the photographs in his report were taken in his presence and that the conclusions he arrived at in his report were based on his opinion.

Yap Soon, DW2, the defendant in this case said that the plaintiff's specific function was to put the scrap rubber into the mangling machine. The scrap rubber was carried in a basket and put into the machine. He said that after depositing the rubber on to the chute it is pushed into the machine with the aid of the basket. He said that the machines are maintained regularly and there was a foreman in charge of them. He said that the floor was of cement and rough so that it won't get slippery. Also the cement floor was washed daily and there were drains to drain away the water. He said there were no instructions that the workers should not push the rubber with the basket into the machine. He had no knowledge that after the mandore had complained to the clerk that the baskets were getting caught in the machines the workers were told not to push the rubber with the baskets but to use their hands. He agreed that the plaintiff did some overtime work but this was not recorded in the wage book (Exhibit D1). He said that EPF contributions were also made in respect of the plaintiff but did not know why these too were not recorded in Exhibit D1. He said the book was maintained by the clerk.

At the end of the trial I found for the plaintiff and I held that the defendant was wholly liable as he had failed to provide adequate safety measures to avoid such an accident. I accepted the evidence of the plaintiff and his witness that before this particular accident the workers had been using baskets to push the scrap rubber into the machines and that when the baskets were getting caught in the machines the workers were instructed not to use the baskets but to use their hands. This clearly was dangerous as there was no barrier to provide protection for the hands of the workers. I also accepted the evidence that the cement floor was slippery as the water from the tank was being dripped on to the floor when the scrap rubber was being taken out. The plaintiff was not wearing any footwear and I do not think that this would have made any difference if indeed the floor was slippery. By the very nature of the job which the plaintiff was doing the defendant owed him a duty to see that he was

not placed in a dangerous situation without providing proper and adequate protection against a mishap of the kind which occurred in this case. As the plaintiff pushed the scrap rubber with some force the possibility of slipping was real. And even without slipping there was the risk of such an accident happening while a worker was pushing the rubber along the chute to the rollers with his bare hands and without the aid of any instrument for pushing the rubber - there being no protective barrier near the rollers. In the circumstances therefore I found the defendant wholly liable for the accident.

The report of the assistant inspector of factories, DW1, was not helpful and could not be relied on. In his report he said that the injured person squeezed himself in the 11" gap of the aluminum feeding chute. There was however no evidence or any information from any source on which DW1 could arrive at such a conclusion.

On the plaintiff's earnings I accepted the evidence of the plaintiff and that of PW3 that the plaintiff earned a little over RM6 per day and with overtime he earned between RM200 and RM250 per month. The wage book (Exhibit D1) showed that his earnings were between RM4.50 and RM4.70 per day. This was denied by the plaintiff and he did not agree with the figures written in the wage book. The defendant had admitted that overtime was not entered in the wage book so I held it more probable that the plaintiff was earning between RM200 and RM250 per month.

The plaintiff was about 18 years old at the time of the accident and has remained unemployed since then. He said that he had tried to get a job but without success because of his injuries. The plaintiff had received a crush injury to his right hand resulting in a complete amputation of all fingers. For this injury, pain and suffering and loss of amenities I awarded a sum of RM22,000. I also awarded a sum of RM11,800 for a period of 59 months as the pre-trial loss at the rate of RM200 per month and a further sum of RM17,900 for future loss of earnings at the rate of RM120 per month on a purchase of 20 years. Special damages were agreed at RM315.

Also found at [1982] CLJ 494